

LAW OFFICES

BAILEY, EWING, DALE & CONNER

NASHVILLE BANK & TRUST BUILDING

NASHVILLE, TENNESSEE 37201

IN THE CHANCERY COURT FOR DAVIDSON COUNTY
AT NASHVILLE

MARGARET CROFT and ELISE)
CROFT, adult residents of)
Davidson County, Tennessee;)
and)

NASHVILLE CHILDREN'S MUSEUM)
ASSOCIATION, a Tennessee public)
welfare corporation, with its)
principal office in Davidson)
County, Tennessee.)

Complainants)

VS.)

RULE NO. _____

LOUISVILLE & NASHVILLE RAILROAD)
COMPANY, a Kentucky corporation,)
qualified and doing business in)
Davidson County, Tennessee.)

Defendant)

BILL TO ENJOIN AND ABATE A NUISANCE

Complainant respectfully shows to the Court:

I.

That the Complainants, Margaret and Elise Croft, adult residents of Davidson County, Tennessee, were owners and possessors of certain tracts of land described below; that on May 21, 1964, said Complainants conveyed to the Complainant, Nashville Children's Museum, a Tennessee public welfare corporation with its principal office in Davidson County, a portion thereof subject to certain conditions and interests as stipulated in the deed of conveyance, appearing of record in Book 3765, page 248 and Book 3769, page 381, Register's Office of Davidson County, Tennessee.

The Complainant, Children's Museum owns a vested remainder interest in the spring and brook hereinafter referred to.

The said tracts of land are described as follows, to-wit:

Land in the Sixth Civil District of Davidson County,
Tennessee, described as follows:

TRACT NO. 1. Beginning at a point in the center of the Abbey Road, the southwest corner of the tract of 83.58 acres hereinafter conveyed to Kate Shute Croft; running thence with the center of the Abbey Road north 89-1/2 degrees west 225.62 poles to the point where said center line intersects the easterly line of the L & N Railroad property; thence along the east line of said railroad property north 39-1/2 degrees east 110.8 poles to the beginning of the curve in said line; thence with the curve of the east line of said railroad property in a northeasterly direction 57 poles to a point where said line intersects the original north line of the Shute tract; thence with the said original north line of the Shute tract north 84 degrees 55 minutes east 21.5 poles to a corner stone; thence north 4 degrees east 41.9 poles to the northwest corner of the Shute tract; thence south 87-1/2 degrees east 110.9 poles to a corner; thence south 3-1/4 degrees west 42 poles to a set stone corner; thence north 86-3/4 degrees east 93.4 poles to a hackberry corner tree; thence north 3 degrees 40 minutes east 31.2 poles to an iron pin; thence south 86 degrees 50 minutes east 21.1 poles to a point in the center of the Nolensville Turnpike; thence south 43-3/4 degrees east 45 poles with the center of said turnpike to the original northeast corner of the Harris Tract included in the property hereinafter conveyed to Kate Shute Croft; thence south 46 degrees west 40 poles to a stake; thence south 68-1/2 degrees west 84 poles to a stake; thence south 88-3/4 degrees west 17.2 poles to a stake; thence south 5 degrees west 24 poles to a stake; thence due west with a fence line 19.1 poles to a stake; thence south 6-1/2 degrees 56.2 poles to the beginning, containing 227.99 acres.

BEGINNING at a point in the center of the Nolensville Turnpike, the southeast corner of the Harris Tract purchased by W. D. Shute in the case of Charlton vs. Moore, in the Chancery Court of Davidson County, Tennessee; thence south 46 degrees west 73-1/2 poles to a corner; thence south 87 degrees 50 minutes west 58 poles to the southwest corner of said Harris Tract in W. D. Shute's original line; thence south 4-1/2 degrees west 39.3 poles to the center of the Abbey Road; thence with said center line south 82-3/4 degrees west 14-1/2 poles to a point; thence south 1.08 poles to a stone in Abbey's line; thence north 89-1/2 degrees with the Abbey Road 70.68 poles to a point in the center of the road opposite a stake in the fence line, said stake being 10 links west of a hackberry tree, and being the beginning point of Tract No. 1 hereinabove described; thence north 6-1/2 degrees east 56.2 poles to a stake in a fence line; thence east with the fence 19.1 poles to a stake at a hackberry stump; thence north 5 degrees east 24 poles to a stake; thence north 88-3/4 degrees east 17.2 poles to a stake; thence north 68-1/2 degrees east 84 poles to a stake in the original north line

of the Harris tract; thence north 46 degrees east with said line 40 poles to the center of the Nolensville Turnpike; thence south 44 degrees east with said turnpike 68 poles to the beginning, containing 83.58 acres.

* * * *

Land in the Sixth Civil District of Davidson County, Tennessee, beginning at the southeast corner of the lands owned by Mrs. Kate Shute Croft, deceased, at the time this parcel of land was conveyed to her, where the same meets the tract of land described in Book No. 507, page 386, in the Register's Office of Davidson County, Tennessee, above referred to on the north side of Abbey Lane, running thence at right angles north to the northwest corner of this tract with the line of the lands of the said Mrs. Kate Shute Croft, now deceased:

thence east at right angles, and with the southern boundary of the lands of the said Mrs. Kate Shute Croft to a stone which marks the northeast boundary of the Page lands with the lands of the said Mrs. Kate Shute Croft on the north, and the lands of Dr. Mincy on the east; thence at right angles to the said last mentioned line with the westerly line of Dr. Mincy until the said line of Dr. Mincy meets an off-set in the line of this Page tract; thence continuing in a straight line to Abbey land to the beginning corner, containing nine acres more or less.

Being the same property conveyed to Margaret Croft and Elise Croft by deed of William Croft, of record in Book 840, page 567, Register's Office of said County.

That the Complainants, Margaret and Elise Croft and Nashville Children's Museum, having and maintaining a common interest in said land, therefore join together in this Bill seeking to enjoin the defendant Railroad Company from continuing to damage their property and other interests incident thereto and to collect damages.

II.

That there exists on the Complainants' above described property a beautiful fresh water spring which feeds a pool that overflows and forms a clear everlasting brook running the length of Complainants' property; that said spring and brook, before the happening hereafter complained of was surrounded by watercress and other lush and beautiful growth. It has been a source of

pride, pleasure, and satisfaction for many years and equipped with an electric pump has served as the main water supply for household and other domestic uses of the Complainants; that in addition to the aforesaid human consumption, said spring and brook has also supplied the water needs of an average of one hundred (100) cattle and other animals inhabiting the Complainants' property; that as part of the consideration for the land conveyance by Complainants Margaret and Elise Croft to Complainant Nashville Children's Museum, the latter agreed to operate after the death of the Crofts an educational nature study center for children in which the pond and crystal clear brook would play a large and important role; that the aforementioned water supply and the former beauty and intrinsic value of the clear, unadulterated brook has, therefore, been a center attraction and a valuable asset to the Complainants' property.

III.,

That the defendant, Louisville & Nashville Railroad Company, a Kentucky corporation, qualified and doing business in Davidson County, Tennessee, owns certain land called Radnor Yards adjacent to the Complainants' property and operates thereon a massive railroad complex, which includes the steam washing with detergents, cleaning and servicing of railroad engines and other equipment; that the defendant's operation of the said railroad yard causes the discharge of a great deal of waste material such as detergents, oil, grease, and diesel fuel; that the defendant formerly discharged said waste material into Brown's Creek but the Creek became so polluted along its entire length that a terrible nuisance was created; and that the aforesaid situation became so unbearable that the defendant constructed a pond to retain the

waste material.

IV.

That soon after the above mentioned pond was built it was discovered that the pond was leaking underground and oil, grease, and detergents were entering the spring area on Complainants' property and contaminating the water supply; that requests, pleas and protests have been made by the Complainants to the Defendant, but the problem has continued unabated and threatens to continue in the future; that consulting engineers have made recommendations for adequate waste disposal facilities by the defendant, and the Tennessee Department of Public Health, by laboratory tests, has unequivocally determined the pollution and contamination of Complainants' water supply and brook are caused by the underground leakage between Defendant's waste pond and the Complainants' spring.

V.

That due to the above described pollution and contamination, Complainants' water supply from the spring and brook has been rendered useless; that the natural beauty of said spring and brook, including the flowers, grass, and formerly flourishing watercress, has been completely destroyed, as well as the small wildlife which depended upon the water for its existence; that the herd of cattle belonging to Complainants Margaret and Elise Croft must drink of foul smelling and water covered by floating oil, grease, and detergents which are foaming on the surface and are unhealthy; listless and underweight because of the paucity of pure water and having to drink the contaminated water in order to stay alive; that the proposed educational nature study center cannot be successfully pursued without the benefit of the unadulterated spring and brook; and that the value and usefulness of Complainants' property has been greatly damaged and the situation promises to

magnify in seriousness and harmfulness if the Defendant is not enjoined from continuing its present waste disposal methods. Complainants formerly used the spring water for bathing and all other household water supply purposes, but now have to draw buckets of water from an old cistern for such purposes. The foul smell of oil is obnoxious in the spring area and quantities of oil and detergents can be seen at all times floating on the surface of the water. This condition has become well nigh insufferable, having continued for three years.

VI.

Complainants would further show to the Court that they have been unusually patient with the idle and empty promises by the Defendant Railroad Company to stop their pollution activity, but the Defendant has allowed this activity to continue until the Complainants are now suffering serious immediate and irreparable injury.

VII.

PREMISES CONSIDERED, COMPLAINANT PRAYS:

1. That subpoena to answer issue, as to the resident defendants, and that publication to be made as to the non-resident defendants, requiring them to appear, and answer this bill, but their answer on oath is waived.
2. That an injunction issue to restrain and prohibit the defendant from allowing pollutants and contaminants to enter Complainants' spring and brook, and that the defendant's waste pond and current method of waste disposal be declared a nuisance and abated by the Sheriff at the defendant's expense.
3. That the Complainants be awarded damages for the injuries done as aforesaid mentioned.
4. That the Complainant be afforded such other and further relief as they may be entitled to.

F I A T

To The Clerk of the Chancery Court:

File the foregoing Bill and issue process requiring the Defendant to appear before this Court on _____, 1969, to show cause, if any he has, why he should not be enjoined from contaminating and polluting complainant's water supply, i.e. the spring and brook as described in the Bill attached.

This _____ day of June, 1969.

CHANCELLOR

TO THE CLERK AND MASTER:

Upon the filing of this bill notify the defendant (s) that the application for injunctive relief will be heard in Part _____, Chancery Court, at Nashville, on the _____ day of _____, 19____, at _____ o'clock.

This _____ day of _____, 19____.

Chancellor

This is the first application for an injunction in this case.

Margaret Croft
Margaret Croft

Elise Croft
Elise Croft

NASHVILLE CHILDREN'S MUSEUM

BY: [Signature]

COMPLAINANTS

GOODPASTURE, CARPENTER, WOODS
& COURTNEY

BY: [Signature]

Solicitor

BAILEY, EWING, DALE & CONNER

BY: James C. Dale III

Solicitor

STATE OF TENNESSEE :

COUNTY OF DAVIDSON :

MARGARET CROFT, ELISE CROFT, and NASHVILLE CHILDREN'S MUSEUM ASSOCIATION make oath that the statements in the foregoing bill, made as of their own knowledge, are true, and those made as on information and belief, they believe to be true.

Margaret Croft
Margaret Croft

Elise Croft
Elise Croft

NASHVILLE CHILDREN'S MUSEUM
ASSOCIATION

BY: [Signature]

Sworn to and subscribed before me this 17th day of

July, 1969.

Barbara E. Shumard
Notary Public

My Commission Expires:

1-31-73

17 7 0117

MIR 7/10
SLJ 7/11

FERRISS C. BAILEY (1966)
FRED S. POWELL (1957)

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ROBERT L. ECHOLS
MILTON W. SMITH, JR.

July 9, 1969



WAM 7/16
✓ WAM 7/16
SLJ 7/11

SP files
L & N
Nashville

Mr. Albert W. Hutchison
Third National Bank Building
Nashville, Tennessee

Mr. Joe Thompson, Jr.
Nashville Bank & Trust Building
Nashville, Tennessee

Mr. S. Leary Jones
Executive Secretary
Stream Pollution Control Board
Cordell Hull Building
Nashville, Tennessee 37219

Gentlemen:

Enclosed is a copy of the bill for injunction and abatement of the nuisance that presently injuriously affects the Croft property adjacent to Radnor yards. A hearing on the application for injunction is set for July 25, 1969, at 11:00 A.M. in Division II of the Davidson County Chancery Court.

Very truly yours,

BAILEY, EWING, DALE & CONNER

BY James C. Dale, III
JAMES C. DALE, III